



**Date:** February 20, 2012

**To:** Thomas J. Bonfield, City Manager

**Through:** Theodore L. Voorhees, Deputy City Manager

**From:** Donald Greeley, Deputy Director of Department of Water Management  
Simon Lobdell, PE, Civil Engineer III

**Subject:** Third Amendment to Landfill Gas Utilization, Cooperation and Royalty agreement with Methane Power Durham, LLC

#### Executive Summary

The City entered into a contractual agreement with Methane Power Durham, LLC (hereafter MP Durham) on July 26, 2008 to use methane gas drawn from the City's closed landfill for the generation of electricity. The agreement identified that MP Durham would pay a royalty of \$85,000 per generator on site. MP Durham has requested that the royalty agreement be modified to make the royalty payment proportional to the amount of gas available for their generators. The modification would allow MP Durham to maximize their generators and their use on site, thus, allowing MP Durham to keep their third generator on site. The Department of Water Management Staff has reviewed the proposed modification and is in support of the modification.

#### Recommendation

The administration recommends that the City Council:

- Authorize the City Manager to execute the Third Amendment to the Landfill Gas Utilization Cooperation and Royalty Agreement with MP Durham, LLC and its subrogated partner company, Durham Landfill Electricity, LLC for the modification of the royalty payment structure.

#### Background

The City of Durham Landfill was closed in 1998. The City is required by its permit to maintain a gas collection system for methane generated in the landfill. Previously, the City flared all landfill gas and received no benefit from the operation. The landfill gas utilization contract was a first of its kind for the City. The initial gas availability predicted during the contract negotiations anticipated at least two (2) generators would be used. However, before initiating commercial operation, the Contractor determined that the landfill would likely support a third unit. The Contractor began commercial operation of the facility on December 5<sup>th</sup>, 2009. The current royalty payment is meant to be paid based on the number of generators on site and the gas available to produce electricity. The facility has been operating as planned during this period generating between 2 and 3 MW of power at a consistent rate.

#### Issues/Analysis

Semiannual payments have been received in a timely manner but have not been at the maximum rate with three generators on site because there is an outstanding disagreement in the interpretation of the contract. The Contractor, although it is clear that they are using a third generator part of the year, has not had adequate gas production from the landfill to operate a full capacity third generator.

The understanding of all parties was that the royalty payment would be equivalent for all generators at a rate of \$85,000 per generator, assuming the gas availability was sufficient to support the third generator. This translates to a payment to the City of approximately \$0.01 \$/kWh sold to Progress Energy. Under the contract MP Durham interprets their responsibility to pay as only being that for two generators (\$170,000 per year) as opposed to the maximum possible payment under the contract of \$255,000.

This amendment would authorize MP Durham to make payments based on the actual gas received and specifically make payments of \$0.01/kWh. The agreement will also retroactively introduce a prorating clause into the contract to resolve disputes with previous payments. This is a reasonable alternative to the current royalty agreement and a more common approach than what is in the original contract. This amendment will increase the total revenues from the site in the future as gas production slows from the landfill. If we do not amend the contract, MP Durham will (and would have previously) removed its third generator from the site. Furthermore, this amendment will make it more likely that MP Durham will continue to invest in the improved operation of the gas system at no cost to the City.

#### Alternatives

**Take no action** – Without modifying the contract the City will receive reduced revenues from the contract in the long term and will have to negotiate an unknown resolution for the previous payments on the contract.

#### Financial Impact

According to staff analysis, this contract amendment will result in approximately equivalent cash flow in the next four years and a net positive over the next decade with approximately a 10% increase in revenues over the life the contract. The funds will continue to be a revenue source to support the closed sanitary landfill, 5400P710.

#### SDBE

This is a contract amendment and was not reviewed by the Department of Equal Opportunity/ Equity Assurance for compliance with the Ordinance to Promote Equal Business Opportunities in City Contracting.